

STATE OF MICHIGAN
COURT OF APPEALS

NORTHERN INDUSTRIAL SUPPLY, INC., and
VIKING INVESTMENTS, INC.,

UNPUBLISHED
February 29, 2000

Plaintiffs-Appellees,

v

No. 215638
Court of Claims
LC No. 97-016599-CM

DEPARTMENT OF TREASURY,

Defendant-Appellant.

Before: Fitzgerald, P.J., and Saad and Whitbeck, JJ.

PER CURIAM.

Defendant Department of Treasury appeals as of right the trial court's order granting plaintiffs Northern Industrial Supply, Inc. and Viking Investment, Inc. summary disposition pursuant to MCR 2.116(C)(10). We affirm.

I. Basic Facts And Procedural History

Plaintiffs Northern Industrial Supply and its sister corporation, Viking Investments, operate in Bay City. From 1990 until 1993, plaintiffs paid Andrew Anderson as an independent contractor instead of as a corporate employee or officer. In a 1993 federal audit, the IRS determined that Anderson was an employee and that plaintiffs were therefore liable for payroll taxes on the compensation paid to Anderson in 1990 and 1991. In December 1993, plaintiffs agreed to pay the federal government \$10,813 in past-due FICA and federal income tax dating from December 1990 to December 1991. Plaintiffs also agreed to pay \$2,162 in penalties for these previously unmade payments. Plaintiffs issued two corrected W-2s for Anderson, one for 1990 and one for 1991. The IRS permitted plaintiffs to deduct the payment of these taxes on their 1993 federal income tax return.

Plaintiffs filed their 1993 Michigan single business tax return claiming a small business tax credit on the basis of the compensation level of its officers and employees. The Department of Treasury audited plaintiffs following this 1993 claim for a tax credit. Pursuant to MCL 208.36(2)(b)(i); MSA 7.558(36)(2)(b)(i), to qualify for the small business tax credit, an officer's compensation cannot exceed \$95,000 for "the respective tax year." The phrase "respective tax year" is not defined by the statute.

The Department of Treasury determined that the \$10,000 in payroll tax payments made to the IRS in 1993 was compensation to Anderson during the 1993 tax year. With this additional “compensation,” plaintiffs’ compensation of Anderson exceeded \$95,000 in 1993. The Department of Treasury therefore determined that plaintiffs were ineligible for the small business tax credit. The Department of Treasury issued a final bill in the amount of \$10,480 to plaintiffs for taxes due under the single business tax.

Plaintiffs initially contested the bill through an informal conference proceeding with the Department. The referee noted that the issue was one of first impression and determined that plaintiffs’ interpretation of the single business tax and small business credit was persuasive. Specifically, the referee determined that the Legislature intended that the Department examine only compensation earned by an officer during the tax year and not amounts relating to compensation paid or earned in prior years. The referee stated that the small business credit was intended to offer relief to small business taxpayers for what occurred in the particular tax year and not on business activity related to prior years. Apparently, the Department did not accept the informal recommendation and insisted that plaintiffs pay the assessed single business tax. Plaintiffs paid the tax under protest and thereafter filed this action.

In the Court of Claims, both plaintiffs and the Department filed cross-motions for summary disposition. The Court of Claims ruled that plaintiffs were eligible to claim a small business tax credit under the Michigan single business tax act. Specifically, the Court of Claims ruled that plaintiffs’ 1993 payment of payroll taxes to the IRS for liability arising in 1990-1991 could not be counted as officer compensation for 1993, and therefore did not disqualify plaintiffs from taking the small business credit.

II. Standard Of Review

The Department argues that the Court of Claims erred in ruling that payroll taxes paid by plaintiffs in 1993 were not compensation for the 1993 tax year. “Statutory interpretation is a question of law subject to de novo review.” *Michigan Automotive Research Corp v Dep’t of Treasury (After Remand)*, 222 Mich App 227, 231; 564 NW2d 503 (1997). De novo review is also appropriate when the Court of Claims decides a motion for summary disposition. *Auto-Owners Ins Co v Dep’t of Treasury*, 226 Mich App 618, 621; 575 NW2d 770 (1997).

III. The “Respective Tax Year”

A. The Single Business Tax

Michigan taxes businesses pursuant to the single business tax act. MCL 208.1 *et seq.*; MSA 7.558(1) *et seq.* The single business tax is a value-added tax that measures increases in the value of goods and services brought about by the seller’s actions between the time of purchase and the time of sale. *Cowen v Dep’t of Treasury*, 204 Mich App 428, 432; 516 NW2d 511 (1994). The intended effect of the single business tax is to impose a tax on the privilege of conducting business activity within Michigan. *Id.* The single business tax is not an income tax and does not tax what a business derives from the economy; instead, it taxes what a business adds to the economy. *Town & Country Dodge, Inc v Dep’t of Treasury*, 118 Mich App 778, 786; 325 NW2d 577 (1982), *aff’d* on other grounds

420 Mich 226 (1984). The Michigan single business tax constitutes a percentage of “the adjusted tax base of every person with business activity” that is allocated or apportioned to Michigan. MCL 208.31(2); MSA 7.558(31)(2).

B. The Small Business Credit

The single business tax act includes a small business credit that reduces qualifying small businesses’ single business tax liability. MCL 208.36; MSA 7.558(36). The credit itself is a percentage reduction of the tax liability, calculated by dividing adjusted business income by a percentage of the tax base. Horner, *Michigan Single Business Tax, Small Business Credit*, 57 Mich B J 734, 736 (1978). To qualify for the small business credit, an enterprise must demonstrate, among other things, that no corporate officer receives more than \$95,000 in compensation for a “respective tax year.” MCL 208.36(2)(b)(i); MSA 7.558(36)(2)(b)(i). “Compensation” is defined very broadly and means all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of the employee. MCL 208.4(3); MSA 7.558(4)(3). Compensation also includes payments to state and federal unemployment compensation funds, payments for worker’s compensation insurance, and payments to a pension, retirement, or profit sharing plan. *Id.* Therefore, federal income taxes paid toward a shareholder’s income tax liability are included in compensation. The single business tax act specifically defines tax year and taxable year to mean the calendar or fiscal year “upon the basis of which the tax base is computed” under the act. MCL 208.10(1); MSA 7.558(10)(1). Under this definition, a taxpayer’s tax year “shall be for the same period as is covered by his federal income tax return.” *Id.*

C. Construction Of Tax Laws

In general, ambiguous tax laws are construed against the government. *Little Caesar Enterprises, Inc v Dep’t of Treasury*, 226 Mich App 624, 629; 575 NW2d 562 (1997). However, tax exemption statutes are strictly construed in favor of the taxing unit. *Elias Bros Restaurants, Inc v Dep’t of Treasury*, 452 Mich 144, 150; 549 NW2d 837 (1996). The small business credit is an exemption provision because it reduces the amount of tax imposed on an enterprise. *Auto-Owners Ins Co v Dep’t of Treasury*, 226 Mich App 618, 621; 575 NW2d 770 (1997).

D. The 1993 Payment

The issue here is whether plaintiffs’ 1993 payment of more than \$10,000 to the IRS for payroll taxes due on Anderson’s salary from 1990 and 1991 should be counted as part of Anderson’s compensation for 1993 for the purposes of the small business credit. The Department argues that because plaintiffs did not file amended 1990 and 1991 federal tax returns, but instead simply added the total amount in a 1993 tax payment and issued amended W-2s, the sum is part of Anderson’s compensation for the 1993 year. According to the Department, including this \$10,000 paid to the IRS in Anderson’s compensation for 1993 makes plaintiffs ineligible for the small business credit because it would cause his compensation to exceed \$95,000.

We consider the Department's argument to be spurious. The bargain between the IRS and plaintiffs – that plaintiffs would pay 1990 and 1991 federal taxes owed and issue corrected W-2s specifically for 1990 and 1991 – did not address obligations that relate to the “respective tax year” 1993. The agreement with the IRS and the W-2s specifically note that the obligations relate to employment and earnings dating from 1990 and 1991. Neither the small business credit nor the single business tax take into account earnings or losses made in any year *but* the taxable year. In other words, a business does not consolidate a number of years' earnings or losses to determine its single business tax liability or whether it is entitled to a small business credit.

While plaintiffs paid over \$10,000 in back payroll taxes to the IRS in 1993 for compensation paid to Anderson, this payment was not for the “respective tax year” for which plaintiffs sought a small business credit under MCL 208.36; MSA 7.558(36). If the use of the phrase “respective tax year” is to have any meaning, it is necessary to segregate payments for other than the respective tax year from those directly related to the year for which the taxpayer seeks the small business credit. In interpreting statutes, “every word should be given meaning, and no word should be treated as surplusage or rendered nugatory, if at all possible.” *Michigan Dep't of Labor v Kent Co Rd Comm*, 184 Mich App 525, 528; 459 NW2d 11 (1990).

E. Conclusion

We conclude that the trial court did not err in ruling that taxes paid to the IRS in 1993 were for tax years 1990-1991 and were not part of plaintiffs' compensation of their officer for “the respective tax year” and for which plaintiffs claim a small business tax credit, specifically, 1993.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Henry William Saad

/s/ William C. Whitbeck